IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.34 OF 2005

...

Union of India ...Petitioners

v/s.

M/s.Naik & Badheka ...Respondent

...

Mr.T.J. Pandian for the Petitioners.

Mr.G.L.Masand for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 26TH SEPTEMBER,2005

P.C.:

1. By this petition the Petitioner challenges the award made by the sole arbitrator dated 10-5-2004 only in so far as it allows interest on the amount of

final bill at the rate of 12% p.a. from March, 2000 to June, 2001. It is submitted that clause 16(2) of the contract between the parties lays down that no interest shall be payable upon the earnest money or the security deposit or on the amount payable to the contractor under the contract. It is submitted that without considering that clause the award has been made for payment of interest on the awarded amount payable to the contractor under the contract. The relevant part of the award reads as under:-

> Claim No.9: Delay payment of final bill
>
> (c) From the date of payment due till the date of signing the Bill i.e. for 15 months.
>
> (d) From the date of signing Bill till the date of realization of payment.
>
> It is noted that the 8th and final bill was prepared by the Respondents in January 2000 after signing of SA and signed by the claimants in February 2000. However, the

payment was released in June 2001. The final bill amount was Rs.2,02,353/-. Considering the above delay, interest at the rate of 12% per annum for 15 months (from March 2000 to June 2001) amounting to Rs.30,352.95 is awarded on the delay in payment of final bill)

2. It is clear from the portion of the award which is quoted above that 12% interest has been allowed on the amount due to the contractor under the contract. Clause 16(2) reads as under:-

Interest amounts

16(2) No interest will be payable upon the earnest money or the security deposit or amounts payable to the Contractor under the contract, but Government Securities deposited in terms of Sub-Clause (1) of this clause will be repayable with interest accrued thereon.

3. It is clear from the above quoted clause that that clause was relevant for considering the entitlement of the contractor to receive interest. Perusal of the award, which is quoted above, shows that that clause has not been considered by the learned arbitrator. The arbitrator is a quasi-judicial authority. The arbitrator can not ommit from his consideration the relevant material. If the arbitrator ommits from his consideration the relevant material, then his award suffers from non-application of mind and therefore, violates the principles of natural justice and therefore the award becomes liable to be set aisde. The award of the arbitrator, therefore, so far as it awards interest on the amount due under the final bill is set aside. Award is modified accordingly. Petition disposed of. No order as to costs.

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